

OCT 22 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

KAILASH C. CHAUDHARY,

Plaintiff - Appellant,

v.

LINDA J. CLARKE, Warden,

Respondent - Appellee.

No. 03-15094

D.C. No. CV-98-20887-RMW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Ronald M. Whyte, District Judge, Presiding

Argued and Submitted September 8, 2003
San Francisco, California

Before: SCHROEDER, Chief Judge, O'SCANNLAIN, and TASHIMA,
Circuit Judges.

Kailash C. Chaudhary appeals an order of the district court dismissing as
untimely his petition for writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254.
Chaudhary argues that the one-year statute of limitations found in the

* This disposition is not appropriate for publication and may not be cited to or
by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Antiterrorism and Effective Death Penalty Act (“AEDPA”), 28 U.S.C. § 2244(d)(1), is inapplicable because he has made a colorable showing of actual innocence of second degree murder. Chaudhary also argues that the statute of limitations should be equitably tolled due to prison copying delays, library closures, and other events beyond his control. We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253, and we affirm.

Notwithstanding Chaudhary’s contention that the district court erroneously required him to satisfy the standard for a free-standing claim of actual innocence, we conclude that Chaudhary has failed to meet the lower standard of a gateway claim of innocence sufficient to override his failure to file a timely habeas petition.¹ See Majoy v. Roe, 296 F.3d 770, 775-76 (9th Cir. 2002) (discussing the gateway standard set forth in Schlup v. Delo, 513 U.S. 298 (1995)). We also agree with the district court that Chaudhary has failed to allege extraordinary circumstances to justify equitable tolling of the AEDPA’s statute of limitations. See Miles v. Prunty, 187 F.3d 1104, 1107 (9th Cir. 1999) (stating that the AEDPA’s limitations period may be equitably tolled if the prisoner establishes extraordinary circumstances that made it impossible to file a timely petition).

¹ Because the parties are familiar with the facts, we do not recite them here except as necessary to aid in understanding this disposition.

The order of the district court dismissing Chaudhary's habeas petition is
AFFIRMED.